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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
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10/590,530

05/16/2007

Clifford J. Hawkins

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36234 7590 03/02/2009  
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EXAMINER

CHEN, CATHERYNE

ART UNIT

PAPER NUMBER

1655

MAIL DATE

DELIVERY MODE

03/02/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

|                              |                 |                      |  |
|------------------------------|-----------------|----------------------|--|
| <i>Office Action Summary</i> | Application No. | Applicant(s)         |  |
|                              | 10/590,530      | HAWKINS, CLIFFORD J. |  |
|                              | Examiner        | Art Unit             |  |
|                              | CATHERYNE CHEN  | 1655                 |  |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 11 December 2008.
- 2a) ☒ This action is FINAL.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 35-38 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 35-38 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## DETAILED ACTION

### *Election/Restrictions*

Applicant's election with traverse of the species reducing food intolerance in the reply filed on Dec. 11, 2008 is acknowledged. The traversal is on the ground(s) that the restriction is improper. This is not found persuasive because Lee et al. (Journal of Food Science, 1986, cited in Applicant's IDS) teach the use of zingibain as a meat tenderizer (see, e.g., the abstract and the entire document), while Applicant claims that zingibain is used to reduce allergenicity. Allergy is not the same as being tolerable to food because being allergic to something cannot be made tolerable by changing the food. Allergy is an immune response. Therefore the technical feature is not a contribution over the art, and the claims lack unity.

The requirement is still deemed proper and is therefore made FINAL.

The Amendments filed on Dec, 11, 2008 has been received and entered.

Currently, Claims 35-38 are pending. Claims 35-38 are examined on the merits.

### *Response to Arguments*

### *Claim Rejections - 35 USC § 112*

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

As stated in last Office action, Claim 36 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

What is meant by "reducing" food intolerance? Is there a level of tolerance for food?

*Claim Rejections - 35 USC § 102*

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 35-38 are rejected under 35 U.S.C. 102(b) as being anticipated by What is Ginger (<http://www.ccbba.bc.ca/discuss1/disc1/000011fc.htm>) for the reasons set forth in the previous Office Action, which is set forth below. All of Applicant's arguments regarding this ground of rejection have been fully considered but are not persuasive.

What is Ginger teaches ginger contains proteolytic enzyme zingibain and it has been known in ancient times to flavor breads, sauces, curry dishes, confections, pickles, and ginger ale and is used in cooking (page 4).

What is Ginger does not specifically teach using zingibain to reduce food intolerance and remove food intolerance. However, the method of using ginger to flavor

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food is considered to inherently teach the claimed method because both the reference and the claimed invention are administering the same composition to food. Thus, on the administration of ginger to food, changes in food intolerance would have had to occur if applicant's invention functions as claimed.

Applicant argues that the use of zingibain is not inherently found in ginger and food intolerance is not taught.

In response to Applicant's argument, ginger contains zingibain; therefore, when ginger is used, zingibain is also applied. Ginger is used to flavor food and flavoring is important for improving food taste; therefore, flavoring food will make food more palatable, which reduces food intolerance. As long as the use is taught, it is anticipated by the reference.

### *Conclusion*

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

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the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to CATHERYNE CHEN whose telephone number is (571)272-9947. The examiner can normally be reached on Monday to Friday, 9-5 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terry McKelvey can be reached on 571-272-0775. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Catheryne Chen  
Examiner Art Unit 1655

/Michael V. Meller/  
Primary Examiner, Art Unit 1655